

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE SITTING AT KOFORIDUA  
ON THURSDAY THE 23<sup>RD</sup> DAY OF NOVEMBER, 2023 BEFORE  
HER LADYSHIP JUSTICE GIFTY DEKYEM (MRS.)**

**SUIT NO. C13/83/2022**

BARIMA FUNYAN KWATIA II

PLAINTIFF/RESPONDENT

VS

OSABARIMA OSAFO KYEI KANTANKA II

DEFENDANT/APPLICANT

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PARTIES: Absent

COUNSEL: Frank Nkansah ESQ. holding brief for Isaac Okyere Darkoh ESQ for  
Plaintiff/Respondent

Kwadwo Addeah Safo ESQ for Defendant/Applicant

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**JUDGMENT**

Plaintiff/Respondent (hereinafter called the Plaintiff) is seeking the following reliefs per his writ of summons:

- i. A declaration that upon the true and proper interpretation of the ruling of the High Court, Koforidua delivered on 30-11-2018 in the suit titled THE REPUBLIC v

KYEBI EXECUTIVE COUNCIL, EX PARTE BARIMA FUNYAN KWATIA II (KWASI OFORI AFAM- INTERESTED PARTY) and confirmed by the Court of Appeal in a judgment delivered on 22-7-2020 the plaintiff is and/or remains the chief of Mourso.

- ii. A declaration that the purported appointment of the defendant as the Regent of Mourso by the Okyehene is null and void as the Mourso Stool is not and /or has never been vacant.
- iii. An order or perpetual injunction restraining the defendant, his agents, assigns, or persons claiming through him from having anything to do with the Mourso Stool and its lands and villages in whatever capacity.

The Defendant/Applicant (hereinafter called the Defendant) moved the instant motion to dismiss the instant action for want of jurisdiction. The grounds for the motion are found in the supporting affidavit, particularly the following paragraphs:

- 10. That on 11<sup>th</sup> January 2023, the Judicial Committee of Akyem Abuakwa Traditional Council restrained the Plaintiff/Respondent herein from holding himself out as Chief of Akyem Muoso or even initiating any action in his capacity as Chief of Muoso. A copy of the Proceedings and Ruling is attached as exhibit '4'.
- 11. Clearly, Plaintiff/Respondent's capacity in this suit having been restrained by the body clothed with jurisdiction to determine same, he cannot maintain the instant action in that capacity.
- 12. Further, at the close of pleadings in this suit, all issues identified by the Plaintiff/Respondent for the determination by this Honourable Court are causes or matters affecting chieftaincy; as evidenced by Exhibit '5'.

13. That the determination of these issues which will certainly call for evidence on how the plaintiff/Respondent was allegedly nominated, elected, selected and enstooled as Chief will fix the instant suit under the rubric of cause or matter affecting chieftaincy.
14. That the Defendants/Applicants have been advised by their lawyer and they believe same to be true that by section 57 of the Courts Act, 1993 (Act 459), the High Court is bereft of jurisdiction to determine causes or matters affecting chieftaincy.

For the above reasons, the Defendant is urging the Court to dismiss the instant suit as the issues that fall for determination can only be determined by the Judicial Committee of the Akyem Abuakwa Traditional Council and where the issues are already pending. By exhibit '3', chieftaincy proceedings were initiated against Plaintiff and two others by Defendant herein and others at the Judicial Committee, Akyem Abuakwa Traditional Council, Kyebi. By exhibit '3' the petitioners sought declarations among others that Plaintiff herein has never been the chief of Akyem Muoso and an order directed at him not to initiate any action in any forum, attend any event (including funerals), style himself or engage in any activity in his capacity as Chief of Akyem Muoso.

Pending the determination of exhibit '4', the Judicial Committee of the Akyem Abuakwa Traditional Council made the following interim orders directed at the Plaintiff herein as follows:

Carefully examining the motion paper and all the depositions attached by the Petitioners/Applicants which include court decisions from the Traditional Council to the Appeal Court, it will be contemptuous for the 1<sup>st</sup> Defendant (Plaintiff herein) to act as the Chief of Muoso until the final determination of this suit. The Judicial Committee, therefore, unanimously grants an order of interlocutory injunction

restraining the Defendants, their agents, assigns, privies, successors, contractors, workmen, and all those claiming through them from:

- A. Holding any funeral activity at Akyem Muoso where the 1<sup>st</sup> Defendant will describe himself as Chief of Akyem Muoso or sit in State (i.e. at the funeral) as Chief of Akyem Muoso.
- B. Performing, acting, claiming, or attempting to claim or ascending, occupying or using the position of Chief of Muoso in any form and;
- C. Engaging in any activity (whether festival, funeral, or any form of customary duty reserved for the Chief of Muoso) or action in the name of the Akyem Muoso Stool.

The Defendant placed before the Court the Application for Directions in the instant suit marked as exhibit '5'. The issues proposed by the Plaintiff to be adopted as issues set down for trial are as follows:

1. Whether the plaintiff is and remains the Chief of Mourso
2. Whether the plaintiff has capacity to bring this action.
3. Whether the Defendant's appointment as Regent of Mourso is a nullity.
4. Whether the action is a cause or matter affecting chieftaincy.
5. Any other issue arising from the pleadings.

The plaintiff opposed the motion vehemently by way of his affidavit in opposition. Plaintiff deposed at paragraph 10 of his affidavit in opposition that, the gravamen of his action is for the determination of the effect and import of the ruling of the High Court as well as the judgment of the Court of Appeal of his unlawful destoolment by the Kyebi Executive Council.

In a nutshell, this court has to determine in the instant motion whether the instant action is a cause or matter affecting chieftaincy. Section 76 of Act 759 defined 'cause or matter affecting chieftaincy' to mean a cause or matter, question or dispute relating to any of the following:

- (a) the nomination, election, selection, or installation of a person as a chief or the claim of a person to be nominated, elected, selected, or installed as a chief,
- (b) the deposition or abdication of a chief,
- (c) the right of a person to take part in the nomination, election, selection or installation of a person as a chief or in the deposition of a chief,
- (d) the recovery or delivery of stool property in connection with the nomination, election, selection, installation, deposition or abdication of a chief, and
- (e) the constitutional relations under customary law between chiefs;

The plaintiff per the reliefs he is seeking in the writ of summons is claiming to be the chief of Muoso and for that reason, he is praying the court to make a pronouncement on his status as a chief by the interpretation of judgments dated 30/11/2018 and 22/7/2020. He is further questioning the appointment of the Defendant as the Regent of the Muoso Stool as well as seeking an injunction order to restrain any person from having anything to do with the Muoso Stool and its properties. The Defendant contended that the appointment of regents to occupy vacant Stools pending the enstoolment of substantive chiefs is a constitutional relationship under customary law between chiefs. Defendant in his statement of defence strenuously denied Plaintiff's claim of being the chief of Muoso. Plaintiff's claim as the chief of Muoso is challenged by the Defendant. From the reliefs sought and the defence put forward, it is obvious that the issues in the instant suit border

on chieftaincy matters. In line thereof, the first issue the Plaintiff applied to have set down for trial is whether the plaintiff is or remains the chief of Muoso. The determination of this issue will entail the consideration of whether the plaintiff was validly nominated, elected, selected, or installed as a chief. This is a cause or matter affecting chieftaincy in the intendment of section 76 (a) and (e) of Act 759.

Section 29 of the Chieftaincy Act, 2008 (Act 759) provides that a Traditional Council has exclusive jurisdiction to hear or determine a cause or matter affecting chieftaincy that arises within its area, except causes or matters with the Asantehene or its paramount chief as a party. This court therefore lacks jurisdiction to entertain a cause or matter affecting chieftaincy as the same has been exclusively given to the Traditional Councils. The instant case having been adjudged to be a cause or matter affecting chieftaincy, this Court is bereft of jurisdiction to entertain it. It was held in *Nana Effah Poakwa II & Anor v Kofi Dankwa & Anor*, SUIT NO. H1/10/2022 12<sup>TH</sup> APRIL 2022 CA that:

The law is that where on the face of pleadings and other material available to a party, it can be shown that the action or the defence put up to an action is not maintainable in law, the inherent jurisdiction of the court can be invoked to summarily truncate the case to save time and unnecessary expense.

In light of the foregoing discussions, the instant application is granted. Accordingly, the instant suit is dismissed for want of jurisdiction. Costs of GHS30,000.00 awarded against the Plaintiff and in favour of Defendant.

Justice Gifty Dekyem (Mrs.)

Justice of the High Court

**Cases cited:**

*Nana Effah Poakwa II & Anor v Kofi Dankwa & Anor*, SUIT NO. H1/10/2022 12<sup>TH</sup> APRIL 2022  
CA